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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA,  
OAKLAND DIVISION

CELLSPIN SOFT, INC.,  
Plaintiff,  
v.

NIKE, INC.,  
Defendant.

CASE NO. 17-cv-05931-YGR

**DEFENDANTS' NOTICE OF MOTION  
AND MOTION TO DISMISS PLAINTIFF  
CELLSPIN SOFT, INC.'S COMPLAINTS**

Date: March 6, 2018  
Time: 2:00 p.m.  
Dept.: Courtroom 1, 4<sup>th</sup> Floor  
Judge: Hon. Yvonne Gonzalez Rogers

CELLSPIN SOFT, INC.  
Plaintiff,  
v.  
FITBIT, INC.,  
Defendant.

CASE NO. 17-cv-05928-YGR

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CELLSPIN SOFT, INC.  Plaintiff,  v.  MOOV, INC.  Defendant.	CASE NO. 17-cv-05929-YGR
CELLSPIN SOFT, INC.,  Plaintiff,  v.  FOSSIL GROUP, INC.,  Defendant.	CASE NO. 17-cv-05933-YGR
CELLSPIN SOFT, INC.  Plaintiff,  v.  TOMTOM, INC., et al.,  Defendant.	CASE NO. 17-cv-05937-YGR
CELLSPIN SOFT, INC.,  Plaintiff,  v.  GOPRO, INC.,  Defendant.	CASE NO. 17-cv-05939-YGR

CELLSPIN SOFT, INC.,

Plaintiff,

v.

PANASONIC CORPORATION OF  
NORTH AMERICA,

Defendant.

CASE NO. 17-cv-5941-YGR

CELLSPIN SOFT, INC.,

Plaintiff,

v.

CANON U.S.A., INC.,

Defendant.

CASE NO. 17-cv-5938-YGR

CELLSPIN SOFT, INC.

Plaintiff,

v.

JK IMAGING LTD.,

Defendant.

CASE NO. 17-cv-06881-YGR

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**NOTICE OF MOTION AND MOTION**

**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

NOTICE IS HEREBY GIVEN that on March 6, 2018, at 2:00 p.m., or as soon thereafter as counsel may be heard by the above-titled Court, located at 1301 Clay Street, Oakland, CA 94612, defendants NIKE, Inc. (“Nike”), Fitbit, Inc. (“Fitbit”), Moov, Inc. d/b/a Moov Fitness Inc. (“Moov”), Fossil Group, Inc. (“Fossil”), Misfit Inc. (“Misfit”), TomTom, Inc. (“TomTom”), GoPro, Inc. (“GoPro”), Canon U.S.A., Inc. (“Canon”), Panasonic Corporation of North America (“Panasonic”), and JK Imaging Ltd. (“JK Imaging”) (collectively, “Defendants”) will and hereby do move the Court to dismiss the Complaints filed by plaintiff Cellspin Soft, Inc. (“Cellspin”) pursuant to Fed. R. Civ. P. 12(b)(6).

Defendants respectfully request that Cellspin’s Complaints be dismissed with prejudice under Fed. R. Civ. P. 12(b)(6) because the claims of U.S. Patent No. 8,738,794, U.S. Patent No. 8,892,752, U.S. Patent No. 9,749,847, and U.S. Patent No. 9,258,698 (collectively, the “Asserted Patents”), are invalid under 35 U.S.C. § 101 as they are directed to subject matter that is not patentable. Defendants’ motion is made pursuant to the Court’s December 22, 2017 Order in these related cases, and is based on this Notice of Motion, the Memorandum of Points and Authorities in support thereof, the Declaration of Richard T. Mulloy and exhibits attached thereto, any supplemental briefing filed by individual defendants, the pleadings and papers on file, and any evidence and argument presented to the Court at the hearing.

**STATEMENT OF THE ISSUES TO BE DECIDED**

Whether Cellspin’s Complaints fail to state a claim upon which relief can be granted because the claims of each of the Asserted Patents are invalid under 35 U.S.C. § 101 as directed to ineligible subject matter.

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION AND SUMMARY OF ARGUMENT.**

Plaintiff Cellspin Soft Inc. (“Cellspin”) has asserted one or more of four patents against the various Defendants. Although there are minor differences among the claims of the Asserted Patents, the patent claims are generally directed to collecting data using a “data capture device” or “digital camera,” transferring the data over a Bluetooth or other wireless connection to a mobile device (e.g., a cell phone), and then publishing that data to one or more websites. However, generic methods of acquiring, transferring and publishing data, such as those in the Asserted Patents, are abstract ideas that are not eligible for patent protection under Section 101 of the Patent Act. Indeed, the sole advance claimed in the Asserted Patents is disclosed as simply *automating* the process of uploading data to a website:

The user would then manually upload the image onto a website which takes time and may be inconvenient for the user. Therefore, there is a need for . . . publishing the data and multimedia content on one or more websites *automatically* or with minimal user intervention.

’794 patent, Background, at 1:45-54 (emphasis added). However, the law is clear that using generic computing technology to automate a conventional process and save time or increase efficiencies is not an inventive step that can confer patentability.

Moreover, none of the claims recite any non-conventional hardware or software to implement the purported invention. Instead, the claims recite generic computer terminology and the specification confirms that the purported inventions use “technologies that are pervasive [and] flexible” through devices such as a “ubiquitous mobile phone,” “fairly widespread” personal digital assistants (PDAs), and “general purpose computers and computing devices.” ’794 patent at 9:37-48; 10:10-13. Cellspin’s patents thus do no more than withdraw a basic idea (acquiring, transferring, and publishing data) from the public domain without disclosing any inventive application of that idea.

The Supreme Court, the Federal Circuit, and several decisions within this District have made clear that claims like these are invalid under 35 U.S.C. § 101. The Court should grant Defendants’ motion and dismiss these lawsuits.

## II. THE ASSERTED CELLSPIN PATENTS.

Cellspin has filed more than a dozen lawsuits alleging infringement of several patents in a related family. *See, e.g., Cellspin Soft, Inc. v. Fitbit, Inc.*, Case No. 4:17-cv-05928, Dkt. No. 20 (Cellspin’s Notice of Procedural Posture of Related Cases). Cellspin alleges that defendants Nike, Fitbit, Moov, Fossil, Misfit, TomTom, Adidas America, Inc. (“Adidas”), Under Armour, Inc. (“Under Armour”), Garmin International Inc. and Garmin USA Inc. (together, “Garmin”), and Nikon Americas, Inc. and Nikon Inc. (together, “Nikon”) each infringe the following three patents: U.S. Patent No. 8,738,794 (“the ’794 patent”); U.S. Patent No. 8,892,752 (“the ’752 patent”); and U.S. Patent No. 9,749,847 (“the ’847 patent”).<sup>1</sup> Cellspin also alleges that defendants Garmin, Nikon, TomTom, JK Imaging, Canon, GoPro, and Panasonic each infringe U.S. Patent No. 9,258,698 (“the 698 patent”).<sup>2</sup> Cellspin asserts claims 1-4, 7, and 9 from the ’794 patent, claims 1, 2, 4, 5, and 12-14 from the ’752 patent, claims 1-3 from the ’847 patent, and claims 1, 3-5, 7-8, 10-13, 15-20 from the ’698 patent.

Each of the four Asserted Patents shares the same title (“Automatic multimedia upload for publishing data and multimedia content”) and the same specification.<sup>3</sup> *See* ’794 patent; ’752 patent; ’847 patent, ’698 patent<sup>4</sup>. While the claims in each of the Asserted Patents differ in some minor respects, each of the claims relates generally to a “Bluetooth enabled data capture device” or “digital camera device” having software, that transmits data to a “Bluetooth enabled mobile

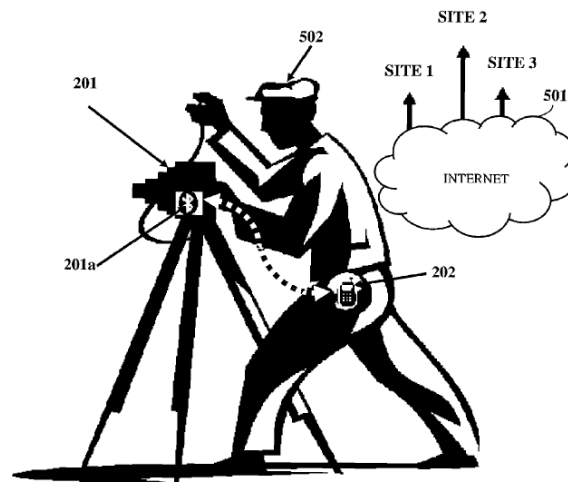
<sup>1</sup> *See Cellspin Soft, Inc. v. Fitbit, Inc.*, No. 4:17-cv-05928, Dkt. No. 1; *Cellspin Soft, Inc. v. Moov Inc. d/b/a Moov Fitness, Inc.*, No. 4:17-cv-05929, Dkt. No. 1; *Cellspin Soft, Inc. v. Adidas America, Inc.*, No. 4:17-cv-05930, Dkt. No. 1; *Cellspin Soft, Inc. v. Nike, Inc.*, No. 4:17-cv-05931, Dkt. No. 1; *Cellspin Soft, Inc. v. Under Armour, Inc.*, No. 4:17-cv-05932, Dkt. No. 1; *Cellspin Soft, Inc. v. Fossil Group, Inc.*, No. 4:17-cv-05933, Dkt. No. 1; *Cellspin Soft, Inc. v. Garmin International Inc.*, No. 4:17-cv-05934, Dkt. No. 1; *Cellspin Soft, Inc. v. Nikon Americas, Inc.*, No. 4:17-cv-05936, Dkt. No. 1; *Cellspin Soft, Inc. v. TomTom, Inc.*, No. 4:17-cv-05937, Dkt. No. 1.

<sup>2</sup> *Cellspin Soft, Inc. v. Garmin International, Inc.*, No. 4:17-cv-05934, Dkt. No. 1; *Cellspin Soft, Inc. v. Nikon Americas, Inc.*, No. 4:17-cv-05936, Dkt. No. 1; *Cellspin Soft, Inc. v. TomTom, Inc.*, No. 4:17-cv-05937, Dkt. No. 1; *Cellspin Soft, Inc. v. JK Imaging Ltd.*, No. 4:17-cv-06881, Dkt. No. 1; *Cellspin Soft, Inc. v. Canon USA, Inc.*, No. 4:17-cv-05938, Dkt. No. 1; *Cellspin Soft, Inc. v. GoPro, Inc.*, No. 4:17-cv-05939, Dkt. No. 1; *Cellspin Soft, Inc. v. Panasonic Corporation of North America, Inc.*, No. 4:17-cv-05941, Dkt. No. 1.

<sup>3</sup> For ease of reference, citations to the Asserted Patent specifications in this Motion will cite to the specification of the ’794 patent.

<sup>4</sup> The ’794 patent, ’752 patent, ’847 patent, and ’698 patent are attached as Exhibits 1, 2, 3, and 4, respectively, to the Declaration of Richard T. Mulloy filed herewith.

device” or “cellular phone” also having software, which then transmits the captured data to one or more websites for publication. *See, e.g.*, ’794 patent at 11:48-12:39 (claim 1); ’752 patent at 11:48-12:37 (claim 1); ’847 patent at 12:12-13:3 (claim 1); ’698 patent at 11:54-12:26 (claim 1). The Asserted Patents state that “this invention relates to pairing a digital capture device in conjunction with a mobile device for automatically publishing data and multi-media content on one or more websites simultaneously.” *See* ’794 patent at 1:33-36. Figure 5 (below) shows “a user utilizing a digital camera in conjunction with a Bluetooth enabled mobile device for publishing data and multimedia content on one or more websites automatically or with minimal user intervention.” *Id.* at 3:20-24.



The “Background” section of the Asserted Patents describes the purported need for the methods and systems claimed by the patents. *See* ’794 patent at 1:32-54. According to the Asserted Patents, in order to publish data to the internet, a typical user would capture data using a digital device, store the data in memory located on the digital device, and then transfer the data to a computer by employing an off-line method such as using a USB or memory stick plugged into a computer. *Id.* at 1:39-45. The user would then “manually upload the [data] onto a website,” which takes time and is “inconvenient” for the user. *Id.* at 1:45-47. Thus, the Asserted Patents state that there was a need for a method or system for transferring and publishing the data captured by the digital device “automatically or with minimal user intervention.” *Id.* at 1:53-54. In short, as the patent titles suggest, the purported advance of the Asserted Patents is simply automating the process of uploading data to one or more websites.

1 The Asserted Patents describe a real-life example of how the alleged invention could be  
 2 used. In this example, an investigative reporter (Jane) in New York City spends each day  
 3 “mov[ing] around the city chasing leads, interviewing people, videotaping her stories, taking  
 4 pictures, and tracking down her next big story.” *See* ’794 patent at 9:15-19. While working on  
 5 her story, she may “need to upload her videos and pictures and send it immediately to the  
 6 associate writer.” *Id.* at 9:19-21. The claimed methods and systems of the Asserted Patents  
 7 “enable[] Jane to automatically upload pictures and videos taken using her digital camera or video  
 8 camera onto a mobile device 202 and publish the pictures, videos, etc. from her mobile device  
 9 202 to the internet 501 with one click or touch of a button.” *Id.* at 9:21-26. Thus, when she is  
 10 collaborating with an associate, “they may see each other’s progress in real time.” *Id.* at 9:30-32.  
 11 Because “sharing information with the associate over electronic mails (emails) may be  
 12 inconvenient, Jane records her progress on the story in the voice format and publishes. The  
 13 associate may access the information from Jane’s blog site, thereby saving considerable time.”  
 14 *Id.* at 9:30-36.

15 The Asserted Patents acknowledge that transferring data between a data capture device  
 16 and a mobile device is nothing new. For example, the specification acknowledges that Bluetooth  
 17 was already used in the prior art to “connect[] and exchang[e] information between devices, for  
 18 example, mobile phones, laptops, personal computers (PCs), printers, digital cameras, etc.” ’794  
 19 patent at 3:49-52. Nor do the Asserted Patents describe anything other than the use of  
 20 “pervasive” and “ubiquitous” (i.e., generic) devices and components. For example, the  
 21 specification states that “the method and system disclosed herein may be implemented in  
 22 technologies that are pervasive, flexible, and capable enough of accomplishing the desired tasks  
 23 of the method and system,” such as “a ubiquitous mobile phone.” *Id.* at 9:37-46.

24 Claim 1 of the ’794 patent is representative of the claims of the Asserted Patents:

- 25 1. A ***method for acquiring and transferring data*** from a Bluetooth enabled data  
 26 capture device to one or more web services via a Bluetooth enabled mobile  
 device, the method comprising:

27 ***providing a software module*** on the Bluetooth enabled data capture device;

28 ***providing a software module*** on the Bluetooth enabled mobile device;

1 *establishing a paired connection* between the Bluetooth enabled data capture device  
and the Bluetooth enabled mobile device;

2 *acquiring new data* in the Bluetooth enabled data capture device, wherein new data  
3 is data acquired after the paired connection is established;

4 *detecting and signaling the new data for transfer* to the Bluetooth enabled mobile  
device, wherein detecting and signaling the new data for transfer comprises:

5 *determining the existence of new data for transfer*, by the software module on the  
Bluetooth enabled data capture device; and

6 *sending a data signal* to the Bluetooth enabled mobile device, corresponding to  
7 existence of new data, by the software module on the Bluetooth enabled data  
capture device automatically, over the established paired Bluetooth connection,  
8 wherein the software module on the Bluetooth enabled mobile device listens for  
the data signal sent from the Bluetooth enabled data capture device, wherein if  
9 permitted by the software module on the Bluetooth enabled data capture device,  
the data signal sent to the Bluetooth enabled mobile device comprises a data  
10 signal and one or more portions of the new data;

11 *transferring the new data* from the Bluetooth enabled data capture device to the  
Bluetooth enabled mobile device automatically over the paired Bluetooth  
12 connection by the software module on the Bluetooth enabled data capture device;

13 *receiving*, at the Bluetooth enabled mobile device, *the new data* from the Bluetooth  
enabled data capture device;

14 *applying*, using the software module on the Bluetooth enabled mobile device, *a user  
15 identifier to the new data* for each destination web service, wherein each user  
identifier uniquely identifies a particular user of the web service;

16 *transferring the new data* received by the Bluetooth enabled mobile device along  
with a user identifier to the one or more web services, using the software module  
17 on the Bluetooth enabled mobile device;

18 *receiving*, at the one or more web services, *the new data* and user identifier from the  
Bluetooth enabled mobile device, wherein the one or more web services receive  
19 the transferred new data corresponding to a user identifier; and

20 *making available*, at the one or more web services, *the new data* received from the  
Bluetooth enabled mobile device for public or private consumption over the  
internet, wherein one or more portions of the new data correspond to a particular  
21 user identifier.

22  
23 '794 patent at 11:48-12:39 (emphasis added).

24 Claim 1 of the '794 patent ultimately boils down to the acquisition (e.g., "acquiring",  
25 "detecting," "determining") and transfer (e.g., "sending", "receiving", "transferring") of data by  
26 generic devices, and publishing that data to one or more websites. *See id.* The remaining claims  
27 are directed to the same concepts. For example, the asserted independent claims of the '752  
28 patent recite a similar method using a "secured" Bluetooth connection with an encryption step

1 and some other minor differences from claim 1 of the '794 patent. *See* '752 patent at 11:48-  
 2 12:37. Likewise, the asserted system claims of the '847 perform substantially the same data  
 3 acquisition and transfer steps as in the other patents, but add the use of a generic "Bluetooth  
 4 enabled cellular phone," "first processor," and "mobile application." *See* '847 patent at 12:12-  
 5 13:3. The asserted claims of the '698 patent are directed to the same data acquisition, transfer,  
 6 and publishing concepts, but include some minor differences, such as claiming a "digital camera  
 7 device" instead of the "data capture device" in the other patents, along with a more general  
 8 "wireless connection" instead of Bluetooth. *See* '698 patent 11:54-12:26. The dependent claims  
 9 of the Asserted Patents add other insignificant details such as specifying the location of the  
 10 Bluetooth technology and the type of data collected, among others.<sup>5</sup> In short, despite some  
 11 nominal differences, the claims of the Asserted Patents are all directed to substantially similar  
 12 methods and systems for acquiring, transferring and publishing data.

### 13 **III. RELEVANT LEGAL STANDARDS.**

#### 14 **A. Whether A Patent Is Directed To Patentable Subject Matter Can Be Decided** 15 **On A Motion To Dismiss.**

16 Under Federal Rule of Civil Procedure 12(b)(6), a district court must dismiss a complaint  
 17 if it fails to state a claim upon which relief can be granted. To survive a Rule 12(b)(6) motion to  
 18 dismiss, the plaintiff must allege "enough facts to state a claim to relief that is plausible on its  
 19 face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). In determining whether the  
 20 plaintiff has stated a claim upon which relief can be granted, the plaintiff's factual allegations are  
 21 accepted as true. *See Usher v. City of Los Angeles*, 828 F.2d 556, 561 (9th Cir. 1987). However,

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23 <sup>5</sup> The asserted dependent claims relate to basic concepts such as: (a) the type of user identifier or  
 24 user information (claim 2 of the '794 patent; claim 2 of the '847 patent; claims 3 and 15 of the  
 25 '698 patent); (b) the location of the Bluetooth hardware (claim 4 of the '794 patent; claim 2 of the  
 26 '752 patent); (c) the content or type of data or data signal, including whether the data includes a  
 27 time stamp (claim 7 of the '794 patent; claims 4 and 13 of the '752 patent; claim 3 of the '847  
 28 patent; claims 4, 7 and 16 of the '698 patent); (d) the timing of the data transfer (claim 3 of the  
 '794 patent); and (e) whether the transferred data or event notification are associated with new  
 data (claim 9 of the '794 patent; claims 5 and 14 of the '752 patent). *See* '794 patent at 12:39-50;  
 13:48-50; 13:56-58; '752 patent at 12:38-40; 12:44-49; 14:36-42; '847 patent at 13:4-10; 698  
 patent at 12:38-44; 13:38-40; 15:35-16:5). All of the claims of the Asserted Patents are invalid  
 under Section 101 for the same reasons.



1 the Court is not required to accept as true “allegations that are merely conclusory, unwarranted  
2 deductions of fact, or unreasonable inferences.” *In re Gilead Scis. Sec. Litig.*, 536 F.3d 1049,  
3 1055 (9th Cir. 2008).

4 The Federal Circuit has “repeatedly recognized that in many cases it is possible and  
5 proper to determine patent eligibility under 35 U.S.C. § 101 on a Rule 12(b)(6) motion.” *Genetic*  
6 *Techs. Ltd. v. Merial LLC*, 818 F.3d 1369, 1373 (Fed. Cir. 2016); *Cleveland Clinic Found. v.*  
7 *True Health Diagnostics LLC*, 859 F.3d 1352, 1360 (Fed. Cir. 2017) (“[W]e have repeatedly  
8 affirmed § 101 rejections at the motion to dismiss stage, before claim construction or significant  
9 discovery has commenced.”); *see also Bancorp Servs., L.L.C. v. Sun Life Assurance Co. of*  
10 *Canada*, 687 F.3d 1266, 1273 (Fed. Cir. 2012) (“There is no requirement that claims construction  
11 be completed before examining patentability.”). Indeed, several judges in this District have  
12 granted motions to dismiss on the ground that one or more asserted patents are invalid under  
13 Section 101. *See OpenTV, Inc. v. Apple Inc.*, No. 5:15-cv-02008, 2016 WL 344845, at \*10 (N.D.  
14 Cal. Jan. 28, 2016) (granting motion to dismiss for invalidity under 35 U.S.C. § 101); *TS Patents*  
15 *LLC v. Yahoo! Inc.*, No. 17-cv-01721, 2017 WL 3838477, at \*26 (N.D. Cal. Sept. 1, 2017)  
16 (same); *Purepredictive, Inc. v. H2O.AI, Inc.*, No. 17-cv-03049, 2017 WL 3721480, at \*7 (N.D.  
17 Cal. Aug. 29, 2017) (same).

18 **B. Abstract Ideas Are Not Patentable Under 35 U.S.C. § 101.**

19 Under Section 101 of the Patent Act, “[w]hoever invents or discovers any new and useful  
20 process, machine, or composition of matter, or any new and useful improvement thereof, may  
21 obtain a patent therefor, subject to the conditions and requirements of this title.” 35 U.S.C. § 101.  
22 However, “[l]aws of nature, natural phenomena, and abstract ideas are not patentable” under  
23 Section 101. *Ass’n for Molecular Pathology v. Myriad Genetics, Inc.*, 133 S. Ct. 2107, 2116  
24 (2013). This is because “such discoveries are manifestations of . . . nature, free to all men and  
25 reserved exclusively to none.” *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 132 S. Ct.  
26 1289, 1293 (2012).

27 In *Alice Corp. v. CLS Bank*, the Supreme Court articulated a two-step test for identifying  
28 claims directed to unpatentable subject matter under Section 101. *Alice Corp. Pty. Ltd. v. CLS*



1 *Bank Int'l*, 134 S. Ct. 2347 (2014). First, the court must “determine whether the claims at issue  
 2 are directed to a patent-ineligible concept” such as an abstract idea, law of nature, or natural  
 3 phenomenon. *Id.* at 2355. Second, if the claims are directed to a patent-ineligible concept, the  
 4 Court must “consider the elements of each claim both individually and as an ordered combination  
 5 to determine whether the additional elements transform the nature of the claim into a patent-  
 6 eligible application.” *Id.* (internal quotations omitted).

7 The first step of the *Alice* inquiry is a “filter” on the claims, determining whether “their  
 8 character as a whole is directed to excluded subject matter.” *Internet Patents Corp. v. Active*  
 9 *Network, Inc.*, 790 F.3d 1343, 1346 (Fed. Cir. 2015). In other words, courts look at the “focus” or  
 10 “basic thrust” of the claims. *See Electric Power Group LLC v. Alston S.A.*, 830 F.3d 1350, 1353  
 11 (Fed. Cir. 2016). When evaluating computer-related claims, courts look to whether the claims  
 12 “improve the functioning of the computer itself,” *Alice*, 134 S. Ct. at 2359, or whether  
 13 “computers are invoked merely as a tool” to implement an abstract process. *Enfish, LLC v.*  
 14 *Microsoft Corp.*, 822 F.3d 1327, 1336 (Fed. Cir. 2016). Ideas that could “be performed by  
 15 humans without a computer” are abstract and not eligible for patent protection. *Mortg. Grader,*  
 16 *Inc. v. First Choice Loan Servs., Inc.*, 811 F.3d 1314, 1324 (Fed. Cir. 2016). Moreover,  
 17 information itself is intangible. *See Electric Power*, 830 F.3d 1350, 1353 (Fed. Cir. 2016).  
 18 Accordingly, claims are abstract where they are directed to actions such as collecting data,  
 19 analyzing data, and/or publishing the results of that analysis. *Id.*; *see also TS Patents*, 2017 WL  
 20 3838477, at \*7.

21 On this basis, courts have found the following claims directed to various acts of  
 22 information or data acquisition and transfer (including, among others, acquiring, analyzing,  
 23 sending, receiving, and publishing data) to be abstract ideas under the *Alice* test:

- 24 • Systems and methods for performing real-time monitoring of an electric power grid  
 25 by collecting data from multiple data sources, analyzing the data, and displaying the  
 26 results, *Electric Power Group*, 830 F.3d at 1351;

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- 1 • A device used for recording a digital image, storing the digital image, and  
2 transferring the digital image to a server for further processing, *In re TLI Commc 'ns*,  
3 823 F.3d 607, 609 (Fed. Cir. 2016);
- 4 • A method claiming the functional results of converting, routing, controlling,  
5 monitoring, and accumulating records, *Two-Way Media Ltd. v. Comcast Cable*  
6 *Comm 'cns, LLC*, 874 F.3d 1329, 1337 (Fed. Cir. 2017);
- 7 • Claims directed to collecting and analyzing information to detect misuse, and  
8 notifying a user when misuse is detected, *FairWarning IP, LLC v. Iatric Sys., Inc.*,  
9 839 F.3d 1089, 1093-95 (Fed. Cir. 2016);
- 10 • Claims directed to transmitting information about a mail object over a network using  
11 a personalized marking, *Secured Mail Solutions LLC v. Universal Wilde, Inc.*, 873  
12 F.3d 905, 908 (Fed. Cir. 2017);
- 13 • Claims for collecting data, recognizing certain data within the collected set, and  
14 storing that data, *Content Extraction and Transmission LLC v. Wells Fargo Bank,*  
15 *National Ass 'n*, 776 F.3d 1343, 1347 (Fed. Cir. 2014); and
- 16 • Methods for validating entry into a transit system involving acquiring identification  
17 data from a bankcard, using the data to verify if the bankcard is valid, and denying  
18 access to a transit system if the bankcard is invalid, *Smart Sys. Innovations, LLC v.*  
19 *Chicago Transit Authority*, 873 F.3d 1364, 1371-72 (Fed. Cir. 2017).

20 Step two of the *Alice* inquiry is a “search for an inventive concept—i.e., an element or  
21 combination of elements that is sufficient to ensure that the patent in practice amounts to  
22 significantly more than a patent upon the ineligible concept itself.” *Alice*, 134 S. Ct. at 2355. The  
23 inventive concept must be “significantly more than the abstract idea itself,” *id.*, “must be more  
24 than well-understood, routine, conventional activity,” *Mayo*, 132 S. Ct. at 1298, and “cannot  
25 simply be an instruction to implement or apply the abstract idea on a computer,” *BASCOM*  
26 *Global Internet Services, Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1349 (Fed. Cir. 2016). *See*  
27 *also Affinity Labs of Texas, LLC v. DIRECTV, LLC*, 838 F.3d 1253, 1262 (Fed. Cir. 2016) (no  
28 inventive concept where claim “simply recite[d] the use of generic features of cellular telephones,

such as a storage medium and a graphical user interface, as well as routine functions, such as transmitting and receiving signals, to implement the underlying idea”). Moreover, claiming the “improved speed of efficiency inherent with applying the abstract idea on a computer” does not transform an abstract idea into patent-eligible subject matter under *Alice*. See *Intellectual Ventures I LLC v. Capital One Bank (USA)* (“*Capital One Bank*”), 792 F.3d 1363, 1367 (Fed. Cir. 2015); *Audatex N. Am., Inc. v. Mitchell Int’l, Inc.*, No. 2016-1913, --- F. App’x ----, 2017 WL 3188451, at \*3 (Fed. Cir. July 27, 2017) (adding computer functionality and the use of the Internet to “increase the speed and efficiency of an abstract process” is not enough to show an inventive concept).

#### IV. THE ASSERTED PATENTS ARE INVALID UNDER 35 U.S.C. § 101.

Each of the claims of the Asserted Patents is invalid because none of the claims are directed to patentable subject matter. 35 U.S.C. § 101. Instead, the claims of the Asserted Patents are all directed to abstract ideas such as acquiring, transferring and/or publishing data. Moreover, the claims all use generic devices and components such as “data capture devices,” “mobile devices,” “cellular phones,” and “processors” to accomplish those tasks. In these circumstances, there is no inventive concept sufficient to transform the abstract ideas of the claims into patentable subject matter, and each of the claims is invalid under Section 101.<sup>6</sup>

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<sup>6</sup> All of the asserted patent claims and each of the limitations contained therein are invalid because they: (1) claim patent-ineligible abstract ideas; and (2) do not contain any inventive concept to transform the claimed abstract ideas into patent-eligible subject matter. Although a majority of the discussion in this Motion is directed to claim 1 of the ’794 patent, the remaining claims of the Asserted Patents suffer the same defects and are invalid for the same reasons. Where, as here, all of the asserted patent claims are “substantially similar and linked to the same abstract idea” and a particular claim is representative of the others, the Court need not “expressly address each asserted claim” in determining whether the claims are ineligible under Section 101. *TS Patents* 2017 WL 3838477, at \*10 (citing *Content Extraction*, 776 F.3d at 1348). Here, the four related Asserted Patents all claim the same abstract ideas, and thus each of the claims of the Asserted Patents are invalid under Section 101 for the same reasons. See, e.g., *Bilski v. Kappos*, 561 U.S. 593, 612 (2010) (“[L]imiting an abstract idea to one field of use or adding token post-solution components d[oes] not make the concept patentable.”). Primarily, the claims differ because they vary the generality of the devices to be used (e.g., “digital camera device” instead of “data capture device,” “cellular phone” with a “graphical user interface” instead of “mobile device,” or “Bluetooth” instead of “short-range wireless communication.”). At best, however, this just “confine[s] the abstract idea to a particular technological environment” which “does not render the claims any less abstract.” *DirectTV, LLC*, 838 F.3d at 1258-59.

**A. *Alice* Step One: The Asserted Patents Claim the Abstract Idea of Acquiring and Transferring Data For Publication.**

Under step one of the *Alice* test, courts examine the “focus of the claims” and “their character as a whole” to determine if they are directed to patent-ineligible subject matter. *Electric Power*, 830 F.3d at 1353. Here, the “focus of the claims” is directed to acquiring and transferring data for publication on a website. Thus, the Asserted Patents are directed to precisely the type of abstract ideas that the Federal Circuit has found unpatentable—collecting, transferring, and publishing data or information:

Information as such is an intangible. Accordingly, we have treated collecting information, including when limited to particular content (which does not change its character as information), as within the realm of abstract ideas. In a similar vein, we have treated analyzing information by steps people go through in their minds, or by mathematical algorithms, without more, as essentially mental processes within the abstract-idea category. And we have recognized that merely presenting the results of abstract processes of collecting and analyzing information, without more (such as identifying a particular tool for presentation), is abstract as an ancillary part of such collection and analysis. Here, the claims are clearly focused on the combination of those abstract-idea processes. The advance they purport to make is a process of gathering and analyzing information of a specified content, then displaying the results, and not any particular assertedly inventive technology for performing those functions. They are therefore directed to an abstract idea.

*Id.* at 1353-54 (internal citations omitted). In *Electric Power*, the claims were directed to a “method of detecting events on an interconnected electric power grid in real time over a wide area and automatically analyzing the events” by (1) “receiving a plurality of data streams,” (2) “detecting and analyzing events in real-time from the plurality of data streams,” and (3) “displaying the event analysis results.” *Electric Power*, 830 F.3d at 1351-52. The Federal Circuit concluded that the claims were “clearly focused on the combination of . . . abstract-idea processes” such as “collecting information” and “analyzing information,” and then “presenting the results of abstract processes of collecting and analyzing information.” *Id.* at 1353–54.

In *In re TLI Commc’ns LLC Patent Litigation*, 823 F.3d 607 (Fed. Cir. 2016), the Federal Circuit invalidated a patent with claims very similar to those in the Asserted Patents. In *TLI*, the claims were directed to a method of recording digital images with a smartphone camera, storing

1 the data on the smartphone, and then sending the images to a server for further processing. *See*  
 2 *id.* at 609-10. The Federal Circuit explained that “the problem facing the inventor was not how to  
 3 combine a camera with a cellular telephone, how to transmit images via a cellular network, . . .  
 4 [n]or was the problem related to the structure of the server that stores the . . . digital images.” *Id.*  
 5 at 612. The court thus found that the claims were directed to an abstract idea, and invalid under  
 6 Section 101. In doing so, the court noted that the claims “are not directed to a specific  
 7 improvement to computer functionality” but instead “they are directed to the use of conventional  
 8 or generic technology in a nascent but well-known environment, without any claim that the  
 9 invention reflects an inventive solution to any problem by combining the two.” *Id.*

10 As in *Electric Power* and *In re TLI Commc’ns*, the claims of the Asserted Patents are  
 11 directed to abstract ideas that are not eligible for patent protection. Claim 1 of the ’794 patent is  
 12 abstract because it simply recites “acquiring new data,” “transferring the new data” between  
 13 devices, “receiving the new data at one or more web services,” and “making available, at one or  
 14 more web services, the new data received.” *See* ’794 patent at 11:48–12:38. The remaining  
 15 claims of the Asserted Patents all suffer from the same defect. Indeed, the Federal Circuit has  
 16 repeatedly found that similar data collection, transfer and/or publication claims are abstract. *See*  
 17 *Intellectual Ventures I LLC v. Capital One Financial Corp.*, 850 F.3d 1332, 1341 (Fed. Cir. 2017)  
 18 (patent claim “directed to . . . collecting, displaying, and manipulating data” was abstract);  
 19 *EasyWeb Innovations, LLC v. Twitter, Inc.*, 689 F. App’x 969, 971 (Fed. Cir. 2017) (“As we have  
 20 explained in a number of cases, claims involving data collection, analysis, and publication are  
 21 directed to an abstract idea.”); *W. View Research, LLC v. Audi AG*, 685 F. App’x 923, 926 (Fed.  
 22 Cir. 2017) (“Collecting information, analyzing it, and displaying certain results of the collection  
 23 and analysis are a familiar class of claims ‘directed to’ a patent-ineligible concept.”). Describing  
 24 these abstract ideas with “technical-sounding verbosity,” as the Asserted Patents attempt to do,  
 25 does not change the conclusion that the claims as a whole are directed to abstract ideas not  
 26 eligible for patent protection. *See University of Florida Research Foundation, Inc. v. General*  
 27 *Electric Co.*, No. 1:17-cv-171, 2017 WL 5502940, at \*6 (N.D. Fla. Nov. 16, 2017).

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1        These abstract concepts of collecting, transferring, and publishing data are “undisputedly  
 2 well-known” and “humans have always performed these functions.” *Content Extraction*, 776  
 3 F.3d at 1347; *see also BSG Tech LLC v. AutoZone, Inc.*, No. 2:16-CV-529, 2017 WL 2609066, at  
 4 \*4 (E.D. Tex. Mar. 30, 2017) (“Because the claim can be performed by the human mind or by  
 5 using pen and paper, the claim is directed to an abstract idea.”). Courts have made clear that  
 6 functions that “could all be performed by humans without a computer,” such as those in the  
 7 Asserted Patents, are abstract under the *Alice* test. *See, e.g., Mortg. Grader*, 811 F.3d at 1324.  
 8 Using the functionality of the accused fitness tracking products as an example, a person could  
 9 manually track his or her activity or fitness data (such as how far the person ran), record that data  
 10 on a piece of paper, and transfer or publish those results to others. Indeed, the specifications of  
 11 the Asserted Patents emphasize that the benefit of the purported invention is avoiding the  
 12 inconvenience of manually loading and transferring data to a website for publication. *See* ’794  
 13 patent at 1:37-54. But the fact that a computer can perform any of the data collection, transfer, or  
 14 publishing tasks faster or more conveniently than a human does not avoid the conclusion that the  
 15 claims are directed to patent-ineligible subject matter. *See, e.g., OIP Techs., Inc. v. Amazon.com,*  
 16 *Inc.*, 788 F.3d 1359, 1363 (Fed. Cir. 2015) (“At best, the claims describe the automation of the  
 17 fundamental economic concept of offer-based price optimization through the use of generic-  
 18 computer functions. . . . But relying on a computer to perform routine tasks more quickly or more  
 19 accurately is insufficient to render a claim patent eligible.”). In short, the claims “merely  
 20 implement an old practice in an allegedly new environment,” which underscores that the patent  
 21 claims are directed to an abstract idea. *FairWarning IP*, 839 F.3d at 1094.

22        Alternatively, claims are not directed to abstract ideas under step one of *Alice* where they  
 23 recite “specific . . . improvement[s] in computer capabilities.” *Enfish*, 822 F.3d at 1336. For  
 24 example, in *Enfish*, the Federal Circuit held the claims were drawn to a “specific improvement to  
 25 the way computers operate” and patent eligible because the claimed invention resulted in a  
 26 database with “increased flexibility, faster search times, and smaller memory requirements” than  
 27 databases in the prior art. *Id.* at 1337; *see also Visual Memory LLC v. NVIDIA Corp.*, 867 F.3d  
 28 1253, 1259 (Fed. Cir. 2017) (finding claims valid under *Alice* step one that were “directed to an



1 improved computer memory system” by “permit[ting] different types of processors to be  
2 installed . . . without significantly compromising their individual performance.”).

3 The Asserted Patents do not disclose any special or improved way of acquiring or  
4 transmitting data, and no specific devices are required to perform those tasks. To the contrary,  
5 the patents teach that “the method and system disclosed herein may be implemented in  
6 technologies that are pervasive [and] flexible” through generic hardware such as a “ubiquitous  
7 mobile phone,” “fairly widespread” personal digital assistants, and “general purpose computers  
8 and computing devices.” ’794 patent at 9:37-48; 10:10-13. In other words, the focus of the  
9 Asserted Patents is not “on [a] specific asserted improvement in computer capabilities” but  
10 instead “on a process that qualifies as an ‘abstract idea’ for which computers are invoked merely  
11 as a tool.” *Enfish*, 822 F.3d at 1339. In fact, the selection of devices is so inconsequential that  
12 “[a]ny number and type of machines may be in communication with the computer.” ’794 patent  
13 at 11:27-28. The addition of Bluetooth or similar wireless technology likewise cannot change the  
14 conclusion that the claims are abstract because the Asserted Patents acknowledge that Bluetooth  
15 was a well-known way to “connect[] and exchang[e] information between devices, for example,  
16 mobile phones, laptops, personal computers (PCs), printers, digital cameras, etc.” *Id.* at 3:49–53.  
17 The specification thus confirms that the Asserted Patent claims are directed to an abstract idea  
18 under the first step of the *Alice* test. *DIRECTV*, 838 F.3d at 1258 (finding claims directed to  
19 establishing communication between two points a “broad and familiar concept concerning  
20 information distribution that is untethered to any specific or concrete way of implementing it”).

21 **B. *Alice* Step Two: There is No Inventive Concept That Transforms The**  
22 **Claimed Abstract Ideas Into Patent-Eligible Subject Matter.**

23 Because the claims of the Asserted Patents are directed to a patent-ineligible abstract idea,  
24 the second step of the *Alice* test requires the Court to decide “whether the remaining elements,  
25 either in isolation or in combination with the non-patent-ineligible elements, are sufficient to  
26 transform the nature of the claim into a patent-eligible application.” *Capital One Bank*, 792 F.3d  
27 at 1366-67. When looking at computer-related technology such as that in the Asserted Patents,  
28 courts determine whether there are “specific improvements in the recited technology that go

beyond ‘well-understood, routine, conventional activities’ and render the invention patent-eligible.” *BASCOM*, 827 F.3d at 1348.

Whether the elements of the claims are viewed in isolation or in combination with one another, there is no inventive concept as required by *Alice*, and thus nothing that transforms the abstract idea into patent-eligible subject matter. The claims instead recite “generic computer parts using conventional computer activity.” *Content Aggregation Solutions LLC v. Blu Prods., Inc.*, No. 16-cv-527, 2016 WL 6995490, at \*5 (S.D. Cal. Nov. 29, 2016). But the Federal Circuit has made clear that claiming generic hardware and software—such as the software modules and devices claimed in the Asserted Patents—cannot make an otherwise abstract idea patent-eligible. *See buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350, 1355 (Fed. Cir. 2014) (“That a computer receives and sends the information over a network—with no further specification—is not even arguably inventive.”); *DIRECTV*, 838 F.3d at 1262 (finding no inventive concept where the claim “simply recite[d] the use of generic features of cellular telephones, such as a storage medium and a graphical user interface, as well as routine functions, such as transmitting and receiving signals, to implement the underlying idea”); *Elec. Power Grp.*, 830 F.3d at 1355-56 (“We have repeatedly held that such invocations of computers and networks that are not even arguably inventive are insufficient to past the test of an inventive concept in the application of an abstract idea”); *In re TLI Commc’ns LLC Patent Litigation*, 823 F.3d at 612.

Here, the Asserted Patent claims are directed to the general functions of acquiring, transferring, and publishing data using generic devices and software. All of the recited components and technology in the claims were well-known in the art, and the specification does not even attempt to describe them as new. For example, the claims of the ’794 patent refer to “software modules” that are used to detect, receive, and transfer data from a “data capture device” and a “mobile device” to a “web service.” ’794 patent at 11:48-12:39. The claims of the remaining Asserted Patents use similar terms. *See, e.g.*, ’752 patent at 11:48-12:38 (claiming a “data capture device,” a “mobile device, an “internet service,” and adding a “cryptographic encryption key”); ’847 patent at 12:12-13:3 (claiming a system comprising a “memory device,” a “first processor,” a “data capture circuitry,” and a “mobile application”); ’698 patent at 11:54-



1 12:26 (claiming a “digital camera device,” a “cellular phone,” a “non-volatile memory,” and a  
 2 “media publishing website”). But these are all nothing more than “generic and well-known  
 3 components.” *OpenTV*, 2016 WL 344845, at \*7; *see also Alice*, 134 S. Ct. 2360 (“data  
 4 processing system” and “data storage unit” components were purely functional and generic  
 5 components that were not inventive under Section 101).

6 An inventive concept sufficient to confer patent eligibility is present where “components  
 7 operate in an unconventional manner to achieve an improvement in computer functionality.”  
 8 *Amdocs (Israel) Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288, 1300–01 (Fed. Cir. 2016). The  
 9 claims at issue in *Amdocs* contained an inventive concept because they disclosed a unique  
 10 architecture for a network, which “allow[ed] data to reside close to the information sources,  
 11 thereby reducing congestion in network bottlenecks, while still allowing data to be accessible  
 12 from a central location.” *Id.* at 1291–92. “[T]his distributed enhancement was a critical  
 13 advancement over the prior art” that “stored information in one location, which made it very  
 14 difficult to keep up with massive record flows from the network devices and which required huge  
 15 databases.” *Id.* at 1300, 1292. Thus, the claims included an inventive concept and were  
 16 patentable because they provided “an unconventional technological solution (enhancing data in a  
 17 distributed fashion) to a technological problem (massive record flows which previously required  
 18 massive databases).” *Id.* at 1300.

19 In contrast, the patent specifications here do not describe any particular improvements to  
 20 the generic devices from the claims that would provide the requisite inventive concept. To the  
 21 contrary, the specification confirms there are several known options for each of the generic  
 22 devices referenced in the claims, and several known methods for using those devices to send and  
 23 receive data, including via Bluetooth. *See, e.g.*, ’794 patent at 2:16-18 (types of digital capture  
 24 devices); *id.* at 3:43-46 (examples of Bluetooth communication devices); *id.* at 4:38-44 (a variety  
 25 of ways the data can be transferred); *id.* at 9:40-46 (alternatives to Bluetooth); *id.* at 9:46-54  
 26 (mobile device can be a “ubiquitous mobile phone,” a PDA, or a device with or without telephony  
 27 support); 10:10-13 (methods and algorithms described in patent may be implemented in a  
 28 computer readable medium programmed for “general purpose computers and computing

1 devices”); 10:25-28 (processor means “any one or more microprocessors, Central Processing Unit  
 2 (CPU) devices, computing devices, microcontrollers, digital signal processors or like devices”).  
 3 Thus, the Asserted Patents are clear that the claim elements “merely provide a generic  
 4 environment in which to carry out” the abstract ideas of collecting, transferring, and publishing  
 5 data. *TLI*, 823 F.3d at 611. Whether viewed in isolation or in combination with one another,  
 6 none of the claim elements supply the requisite inventive concept that can transform the abstract  
 7 idea of the claims into patentable subject matter. Simply put, the abstract concept claimed in the  
 8 Asserted Patents “does not become nonabstract” merely because the claims are set in a  
 9 “technological environment” consisting of conventional components and the use of standard  
 10 technology. *Intellectual Ventures I LLC v. Symantec Corp.* (“*IV-Symantec*”), 838 F.3d 1307,  
 11 1319 (Fed. Cir. 2016); *see also Alice*, 134 S. Ct. at 2358.

12 Moreover, any purported improvements in speed or efficiency inherent with applying the  
 13 abstract idea automatically or on a computer are not sufficient to establish an inventive concept  
 14 that transforms the abstract idea into patentable subject matter. *Capital One Bank*, 792 F.3d at  
 15 1367; *see also OIP Techs.*, 788 F.3d at 1363 (claims directed to “automat[ing] or otherwise  
 16 mak[ing] more efficient traditional price-optimization methods” were abstract); *MySpace, Inc. v.*  
 17 *GraphOn Corp.*, 672 F.3d 1250, 1267 (Fed. Cir. 2012) (“While running a particular process on a  
 18 computer undeniably improves efficiency and accuracy, cloaking an otherwise abstract idea in the  
 19 guise of a computer-implemented claim is insufficient to bring it within section 101.”). Thus, any  
 20 suggestion that the Asserted Patents pass muster under *Alice* because they are purportedly  
 21 directed to “automatic” or “real-time” data acquisition, transfer or publication is without merit.  
 22 *See, e.g.*, ’794 patent at 1:34-47; 9:15-36.

23 Nor can there be any argument that the purported novelty of the combination or sequence  
 24 of steps in the claims of the Asserted Patents resolves the deficiencies under Section 101.  
 25 *Synopsis, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1151 (Fed. Cir. 2016) (“a claim for a  
 26 new abstract idea is still an abstract idea”) (emphasis in original); *Ultramercial, Inc. v. Hulu,*  
 27 *LLC*, 772 F.3d 709, 715 (Fed. Cir. 2014) (“We do not agree with Ultramercial that the addition of  
 28 merely novel or non-routine components to the claimed idea necessarily turns an abstraction into

something concrete”); *SkillSurvey, Inc. v. Checkster LLC*, 178 F. Supp. 3d 247, 260 (E.D. Pa. 2016) (“A novel combination of steps alone cannot alone render an abstract idea patentable.”), *aff’d*, 683 F. App’x 930 (Fed. Cir. 2017). This is because a novel sequence of steps still results in only a “grouping of conventional steps and extant technology.” *Smart Sys Innovations, LLC v. Chicago Transit Authority*, No. 14-cv 08053, 2015 WL 4184486, at \*6 (N.D. Ill. July 10, 2015); *see also In re: Bill of Lading Transmission & Processing Sys. Patent Litig.*, No. 1:09-MD-2050, 2016 WL 4505767, at \*3 (S.D. Ohio Aug. 29, 2016) (“But there is nothing ‘inventive’ about shifting the timing of the data collection process – indeed, it seems a matter of common sense. This is all the more true when, as already stated, the execution of the method depends entirely on the conventional operation of commercially-available technology.”).

In short, there is nothing in the claims—whether the elements are viewed in isolation or in combination with one another—that is “significantly more than the abstract idea itself” and transforms the claimed abstract idea into patent-eligible subject matter. *BASCOM*, 827 F.3d at 1349. Because the patent claims are directed to an abstract concept under step one of *Alice*, and because there is no inventive concept that transforms the claims into a patent-eligible application under step two of the *Alice* inquiry, the claims are invalid under Section 101.

## V. CONCLUSION.

For the foregoing reasons, Defendants respectfully request that the Court grant their motion to dismiss because the asserted claims are invalid under 35 U.S.C. § 101 for lack of patentable subject matter.

Dated: January 16, 2018

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